IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.697 of 2006

Mathivanan ... Petitioner

vs.

1.State rep. by its Secretary to Government,
Prohibition and Excise Department,
Secretariat, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai, Egmore, Chennai-8. ... Respondents

For Petitioner : Mr.S.Swamidoss Manokaran
For Respondents : Mr.M.Babu Muthu Meeran,Addl.P.P.

Petition under Article 226 of the Constitution of India for the issuance of writ of habeas corpus to direct the respondents to produce the detenu viz. Babu, S/o Shanmugham, who is now detained in Central Prison, Chennai in pursuance of the detention order passed by the second respondent on 29.6.2006 in Memo No.164/BDFGISV/2006, before this Court, call for the records, set aside the order and set the detenu at liberty.

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is the brother-in-law of the detenu by name Babu, who is detained as a "Bootlegger" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14, 1982), by the impugned detention order dated 29.06.2006, challenges the same in this petition.

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2. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

3. At the foremost, learned counsel appearing for the petitioner, after taking us through the grounds of detention and the documents supplied along with the detention order, submitted that in view of various infirmities, the detention order is liable to be interfered with on the ground of non-application of mind on the part of the detaining authority. While elaborating the above argument, the learned counsel for the petitioner submitted that in the requisition made to the Professor and Head of the Department, Forensic Medicine, Government Stanley Medical College Hospital, Chennai -1, the Sub Inspector of Police has not filled the relevant details.

4. A reading of the above said requisition which is available at page No.72 of the paper booklet makes it clear that though he received the report from the Forensic Lab, Chepauk, Chennai -5 and he wanted to confirm the strength of Atropine and the effect of consumption of the same etc. in all relevant places, the Sub Inspector of Police has failed to furnish the required details. In other words, except the usual format relating to the crime number as well as the offences under Tamil Nadu Prohibition Act, he has not noted the contents of Atropine and the illicit arrack seized from the detenu. Though the certificate of the Forensic Lab is available, for the reasons best known to him, he has neither noted those details in the requisition nor enclosed the same along with his report. Another document which is available at page No.73 of the paper booklet is a letter from the Professor and Head of the Department, Forensic Medicine, Government Stanley Medical College, Chennai -1 to the Inspector of Police, Prohibition Wing and Enforcement, Washermanpet, Chennai - 19. Here again, except referring to the crime number and offences under Tamil Nadu Prohibition Act, there is no specific information about the contents of Atropine. No doubt, the learned Additional Public Prosecutor has brought to our notice the report submitted by the Forensic Lab which contains the strength of Atropine i.e. 8.1mg and also the statement of Dr.B.Shantha Kumar, wherein he refers to the existence of 8.1mg Atropine. It is true that if we consider the report of the Forensic Lab and the statement of the doctor, the contraband contains Atropine to the extent of 8.1mg, which is injurious to health. However, as rightly pointed out by the learned counsel for the petitioner, the requisition made by the Sub Inspector of Police to the Professor and Head of the Department, Forensic Medicine, Government Stanley Medical College, Chennai -1 does not contain any material except the usual cyclostyled/printed form. Unfortunately, this material aspect has not been noticed by the detaining authority, who as rightly pointed out by the learned counsel for the

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petitioner, passed the detention order mechanically. On a perusal of those materials, we are satisfied that in the absence of proper explanation by the person concerned, the detention order is liable to be quashed on the ground of non-application of mind on the part of the detaining authority. Consequently, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

Gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
Prohibition and Excise Department,
Secretariat, Chennai - 9.

2. The Commissioner of Police,
Greater Chennai, Egmore, Chennai-8.

3. The Superintendent of Central Prison,
Chennai

4. The Joint Secretary to Government,
Public (Law and Order) Fort Saint George,
Chennai - 9.

5. The Public Prosecutor, High court
Madras

+ one cc to Mr. S. Swamidoss Manokaran, Advocate s no. 42011

JSK(CO)
NM(21.09.2006)

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